



## **COUNTY OF LOS ANGELES**

### **CHIEF INFORMATION OFFICE**

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CHIEF INFORMATION OFFICER

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December 03, 2013

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

**AMENDMENT NUMBER TWO TO  
MASTER SERVICES AGREEMENT NUMBER 77036 WITH EMC CORPORATION  
(ALL SUPERVISORIAL DISTRICTS – 3 VOTES)**

#### **SUBJECT**

The Chief Information Officer is requesting Board approval of Amendment Number Two to County Master Services Agreement Number 77036 with EMC Corporation to increase the maximum amount authorized for calendar years 2013 and 2014 under the Agreement, and delegate authority to the Chief Information Officer to exercise the Agreement's second two-year option.

#### **IT IS RECOMMENDED THAT THE BOARD:**

Approve and instruct the Chairman of the Board to sign the attached Amendment Number Two to County Master Services Agreement (MSA) Number 77036 with EMC Corporation (EMC) to:

1. Amend the maximum amount authorized for calendar year 2013 from \$3,500,000 to \$3,800,000.
2. Amend the maximum amount authorized for calendar year 2014 from \$3,500,000 to \$5,000,000.
3. Delegate authority to the Chief Information Officer (CIO) to exercise the last two-year option, extending the term from July 6, 2014 to July 5, 2016.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

CIO administers the MSA, which provides County departments with streamlined access to technical

and consulting services for the planning, implementation, and support for County information systems utilizing EMC's Documentum enterprise content management software, which is the Board-approved standard for this technology. EMC software enables the capture, storage, preservation, and retrieval of electronic documents and content.

The purpose of this action is to approve a proposed Amendment to the MSA that will increase the Agreement's maximum amount authorized per-year expenditure for calendar years 2013 and 2014 to support increased departmental demand for EMC professional services. It also delegates authority to the CIO to exercise the last two-year option, extending the term from July 6, 2014 to July 5, 2016.

County engagements under the MSA are executed through a Work Order (WO) process. Your Board authorizes all WO's exceeding \$300,000. Since the MSA was established, 49 WO's were issued under the MSA, with a total value of \$10,060,018.

### **Implementation of Strategic Plan Goals**

The recommended action supports the County's Strategic Plan Goal Number 3, Organizational Effectiveness. The MSA offers the flexibility necessary to meet varied departmental needs while providing a structure for acquiring desired services through a streamlined acquisition process that is standard across the entire enterprise.

### **FISCAL IMPACT/FINANCING**

By approving this proposed Amendment, County departments will continue acquiring services under WO's, which govern the terms and conditions set forth in the MSA. Funding will continue to be obtained from departmental budgets. The administrative provisions of the MSA require confirmation that funding is available before each individual WO is executed.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

On July 7, 2009, your Board approved the MSA with an initial three-year term and two 2 year extensions upon mutual agreement of the parties.

On June 26, 2012, your Board approved Amendment Number One to the MSA to exercise the first two-year option extending the term from July 7, 2012 to July 6, 2014 and to amend the maximum amount authorized per year from \$3,500,000 to \$5,000,000.

### **CONTRACTING PROCESS**

The proposed Amendment updates the County-required contract provisions for insurance and adds the County-required contract provisions for security and privacy.

The proposed Amendment has been approved as to form by County Counsel.

### **IMPACT ON CURRENT SERVICES (OR PROJECTS)**

The proposed Amendment will provide County departments with continued access to EMC's professional and consulting services. There will be no impact upon, or interruption of current services being provided to County departments by EMC.

**CONCLUSION**

Upon approval by your Board, it is requested that the Executive Officer-Clerk of the Board return one adopted stamped copy of the Board letter and three executed copies of Amendment Number Two to the CIO for further processing.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard Sanchez". The signature is written in a cursive style with a large, stylized "R" and "S".

RICHARD SANCHEZ

Chief Information Officer

RS:pg

Enclosures

c: Chief Executive Officer  
Executive Officer, Board of Supervisors  
County Counsel

**AMENDMENT NUMBER TWO**

**TO**

**MASTER SERVICES AGREEMENT**

**BY AND BETWEEN**

**THE COUNTY OF LOS ANGELES**

**AND**

**EMC CORPORATION**

**FOR**

**ENTERPRISE CONTENT MANAGEMENT SERVICES**

**AMENDMENT NUMBER TWO TO  
MASTER SERVICES AGREEMENT BY AND BETWEEN  
THE COUNTY OF LOS ANGELES AND  
EMC CORPORATION FOR  
ENTERPRISE CONTENT SERVICES**

This Amendment Number Two to Master Services Agreement ("Amendment No. 2") is entered into as of \_\_\_\_ day of \_\_\_\_\_, 2013 by and between the County of Los Angeles, a political subdivision of the State of California ("County") and EMC Corporation, which will do business in California as EMC Peripherals, Inc., a Massachusetts corporation ("Contractor"), with reference to the following facts:

**RECITALS**

**WHEREAS**, County and Contractor entered into that certain Master Services Agreement Number 77036 for Enterprise Content Management Services (together with all exhibits and attachments thereto, all as amended prior to the date hereof, the "Agreement"), which was approved by County's Board of Supervisors on July 7, 2009;

**WHEREAS**, On June 26, 2012, the Agreement was amended pursuant to that certain Amendment Number One to, among other things, (a) to exercise the option to for the first Extended Term, to extend the term of the Agreement from July 7, 2012 to July 6, 2014 and (a) to increase the Maximum Contract Sum under the Agreement;

**WHEREAS**, The parties now wish to further amend the Agreement under this Amendment No. 2 in order (i) to increase the Maximum Contract Sum under the Agreement, (ii) to delegate authority to the County's CIO to exercise the option to extend the term of the Agreement for the remaining Extended Term, and (iii) to update the County's required terms and conditions.

**NOW, THEREFORE**, pursuant to Paragraph 10 (Change Notices and Amendments) of the body of the Agreement and in consideration of the mutual covenants of the parties contained, County and Contractor hereby agree to amend the Agreement as follows:

1. The Agreement, as amended by this Amendment No. 2, is hereby incorporated by reference, and all of its terms and conditions, including capitalized terms defined therein, shall have full force and effect as if fully set forth herein.
2. New Paragraphs 10.1.5 and 10.1.6 are added at the end of Paragraph 10.1 (Entire Agreement) to read as follows:
  - 10.1.5 Notwithstanding any other provision of this Paragraph 10.1 (Entire Agreement), (i) the County's CIO shall have the authority to execute on behalf of the County, an Amendment to this Agreement exercising the option to extend the term of the Agreement for second Extended Term as provided in Paragraph 11.1.
  - 10.1.6 The Board of Supervisors or County's Chief Executive Officer, or designee, may require the addition and/or change of certain terms and conditions in the Agreement during the term. County reserves the right to add and/or change such provisions as may

be required by County's Board of Supervisors or Chief Executive Officer. To implement such changes, an Amendment to the Agreement shall be prepared and executed by the County's CIO and an authorized representative of Contractor.

3. Paragraph 11.2 of Paragraph 11 (Term) of the body of the Agreement is deleted in its entirety and replaced with the new Paragraph 11.2 revised to read as follows:

11.2 Notwithstanding the provisions of Paragraph 11.1 above or anything to the contrary in this Agreement, in the event any Work Order executed prior to the expiration of the Agreement continues beyond the term of this Agreement, the term of the Agreement, including any such Work Order, shall continue until the Work Order has been completed or the Agreement has otherwise been terminated in accordance with this Agreement.

4. Paragraph 12.2 of Paragraph 12 (Contract Prices and Fees) is deleted in its entirety and replaced with the new Paragraph 12.2 revised to read as follows:

12.2 The "Maximum Contract Sum" shall be the total monetary amount payable by the County to Contractor for supplying the Services under this Agreement during the term of this Agreement. The Maximum Contract Sum for each calendar year (January 1 through December 31) during the term of this Agreement (prorated for any portion of a calendar year), including all applicable taxes, authorized by County hereunder, shall not exceed Three Million Five Hundred Thousand Dollars (\$3,500,000). Notwithstanding the foregoing, the Maximum Contract Sum shall be temporarily increased to (a) for calendar year 2013, Three Million Eight Hundred Thousand Dollars (\$3,800,000), and (b) for calendar year 2014, Five Million Dollars (\$5,000,000).

5. Paragraph 17 (Insurance) of the body of the Agreement is deleted in its entirety and replaced with the new Paragraph 17 (Insurance) revised to read as follows:

17. INSURANCE

17.1 General Insurance Requirements

Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in this Paragraph 17. These minimum insurance coverage terms, types and limits (in this Paragraph 17, "Required Insurance") also are in addition to and separate from any other contractual obligation imposed upon Contractor pursuant to this Agreement. County in no way warrants that the Required Insurance is sufficient to protect Contractor for liabilities which may arise from or relate to this Agreement.

17.2 Evidence of Coverage and Notice

17.2.1 Certificate(s) of insurance coverage (in this Paragraph 17, "Certificate") satisfactory to County, and a copy of an Additional Insured endorsement (as may be required) confirming County and its Agents (defined below) has been given Insured status under

the Contractor's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing Services under this Agreement.

- 17.2.2 Renewal Certificates shall be provided to County promptly after renewal of Contractor's policy. County reserves the right to request copies of relevant sections of any required Contractor and/or subcontractor insurance policies at any time in the event of a dispute with respect to insurance coverage.
- 17.2.3 Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage and its NAIC (National Association of Insurance Commissioners) identification number. Furthermore, Contractor shall identify to County in writing the amounts of any policy deductibles or self-insured retentions exceeding \$50,000.
- 17.2.4 Neither County's failure to obtain, nor County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.
- 17.2.5 Certificates and copies of any required endorsements shall be sent to County's Chief Information Office.
- 17.2.6 Contractor also shall promptly report to County:
- (i) Any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Such report shall be made in writing within ten (10) days of occurrence.
  - (ii) Any third party claim or suit filed against Contractor or any of its subcontractors which arises from or relates to the Services performed by Contractor under this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County, subject to attorney-client privilege.

17.3 Additional Insured Status and Scope of Coverage

The County of Los Angeles, its Special Districts, elected and appointed officers, employees, and agents (in this Paragraph 17, collectively "County and its Agents") shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to Contractor or to County. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

17.3.1 Cancellation of or Changes in Insurance

On an annual basis, Contractor shall provide County written notice of cancellation or any material change in Required Insurance. In the event Contractor cancels or makes material changes to the Required Insurance that become effective more frequently than annually, then Contractor shall provide to County written notice of such cancellation or material change promptly following the effective date of such cancellation or material change. Additionally, Contractor shall provide to County written notice of cancellation or any material change in Required Insurance not less than ten (10) days when requested by County during the term of any policy. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of this Agreement, in the sole discretion of County, upon which County may suspend or terminate this Agreement in accordance with Paragraph 25.1. Notwithstanding any cancellation or changes in Contractor's policies, Contractor shall at all times during the term of this Agreement maintain the minimum Required Insurance.

17.3.2 Insurer Financial Ratings

Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII or similar rating by a reputable rating agency, unless otherwise approved by County.

17.3.3 Contractor's Insurance Shall Be Primary

Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

17.3.4 Waivers of Subrogation

To the fullest extent permitted by law, Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

17.3.5 Subcontractor Insurance Coverage Requirements

Contractor shall include all subcontractors as insureds under Contractor's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein, and shall require that each subcontractor name the County and Contractor as additional insureds on the subcontractor's General Liability policy. Contractor shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.

17.3.6 Deductibles and Self-Insured Retentions (SIRs)



Contractor's policies shall not obligate County to pay any portion of any Contractor deductible or SIR. County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects County or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

17.3.7 Claims Made Coverage

If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

17.3.8 Application of Excess Liability Coverage

Contractor may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

17.3.9 Separation of Insureds

All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations

17.3.10 Alternative Risk Financing Programs

County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. County and its Agents shall be designated as an Additional Covered Party under any approved program.

17.3.11 County Review and Approval of Insurance Requirements

County reserves the right to review and adjust the required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

17.4 Insurance Coverage

17.4.1 Commercial General Liability Insurance

Providing scope of coverage equivalent to ISO policy form CG 00 01, naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate	\$4 million
Products/Completed Operations Aggregate	\$4 million
Personal and Advertising Injury	\$2 million

Each Occurrence

\$2 million

17.4.3 Automobile Liability Insurance

Providing scope of coverage equivalent to ISO policy form CA 00 01 with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

17.4.4 Workers' Compensation and Employers' Insurance

Insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

17.4.5 Professional Liability/Errors and Omissions

Insurance covering Contractor's liability arising from or related to this Agreement, with a combined single limit of not less than \$2 million per claim. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than two (2) years following this Agreement's expiration, termination or cancellation if any part of the Required Insurance is written on a claims made basis.

17.4.6 Intellectual Property Insurance

Insurance covering any actual or alleged infringement of any copyright, patent, or other rights of third party, and any actual trade secret disclosure or misappropriation. Insurance coverage limit will be at least \$1 million per occurrence. If this insurance is written on a claims made form, Contractor shall either (i) maintain such insurance through the period ending two (2) years following the expiration or termination of this Agreement or (ii) obtain an endorsement on such insurance that provides an extended reporting period of not less than two (2) years following the termination or expiration of this Agreement or insurance policy, whichever is longer, or (iii) replace such claims made insurance coverage with equivalent coverage of the per occurrence form that covers the entire term of the Agreement. Contractor may satisfy all or any portion of the requirements of this Paragraph 17.4.6 through use of self-insurance. County will accept Contractor's self-insurance coverage provided Contractor makes available to County, upon County's request, Contractor's current publicly available audited financial statements, so that County can evaluate these statements and confirm that Contractor has adequate financial resources to respond to claims in the above amount.

17.5 Failure to Maintain Coverage

Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance acceptable to County shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to Contractor and/or suspend or terminate this Agreement in accordance with Paragraph 25.1. Alternatively, if Contractor has not cured such material breach within thirty (30) days of County's written notice thereof, then County may purchase the required insurance coverage and, without further notice to Contractor, deduct from sums due to Contractor any premium costs advanced by County for such insurance.

6. A new Paragraph 77 (Security and Data Destruction) is added to read as follows:

77. SECURITY AND DATA DESTRUCTION

77.1 System Security

Notwithstanding anything to the contrary herein, Contractor shall provide all work utilizing security technologies and techniques in accordance with the industry standards, Contractor's best practices and applicable County security policies, procedures and requirements provided by County to Contractor in writing or otherwise as required by law, including those relating to the prevention and detection of fraud or other inappropriate use or access of systems and networks. Without limiting the generality of the foregoing, when providing Services to the County, Contractor shall, consistent with its practices and policies, implement and use network management and maintenance applications and tools and fraud prevention and detection and encryption technologies and prevent the introduction of any Disabling Device (as defined in Paragraph 9.2(11)) into the County's systems. In no event shall Contractor's actions or inaction result in any situation with respect to the County under this Agreement that is less secure than the security that Contractor then provides for its own systems and data. Contractor shall not use any such applications, tools, or technologies which contravene the County's policies or practices, in County's reasonable determination.

77.2 System Data Security

Contractor hereby acknowledges the right of privacy of all persons as to whom there exists any County data in its possession, custody, or control. Contractor shall protect, secure and keep confidential all County data in its possession, custody or control, in compliance with all federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and information security (including any breach of the security of any County system, such as any unauthorized acquisition of system data that compromises the security, confidentiality or integrity of personal information or Protected Health Information). Further, Contractor shall take all reasonable actions necessary or advisable to protect all County data in its possession, custody or control from loss or damage by any cause, including fire, theft or other catastrophe. In addition, if requested by County's Project Director, consistent with applicable federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and

information security, Contractor shall provide notification to all persons whose unencrypted personal information (other than Protected Health Information) was, or is reasonably believed to have been, acquired by any unauthorized person, and the content, method and timing of such notification shall be subject to the prior approval of County's Project Director. The Contractor's obligations, among other things, to provide notification to all persons whose unencrypted Protected Health Information was, or is reasonably believed to have been, acquired by any unauthorized person, are set forth in Exhibit E (Business Associate Protected Health Information Disclosure Agreement). Contractor shall not use any County data in its possession, custody, or control for any purpose or reason other than to fulfill its obligations under this Agreement. In each applicable Work Order, the County will identify if the County knows any County data that will be in the possession, custody or control of Contractor under such Work Order to be subject to any federal, state and local laws, rules, regulations, ordinances, and publicly known guidelines and directives, relating to confidentiality and information security. For purposes of this Agreement, "County data" means any records, files, or data of the County relating to the County generally, any Department or County Affiliate, or any County constituent to which Contractor or any of its agents, employees, or subcontractors may from time to time have access during the course of its performance of the Services.

#### 77.3 Data Destruction

Contractor(s) and Vendor(s) that County data in its possession, custody or control, have the sole responsibility to certify that such data have been appropriately destroyed consistent with the National Institute of Standards and Technology (NIST) Special Publication SP 800-88 titled Guidelines for Media Sanitization. Available at: <http://csrc.nist.gov/publications/PubsDrafts.html#SP-800-88-Rev.%201>

#### 77.4 Remedies

Contractor acknowledges that a breach by Contractor of this Paragraph 77 may result in irreparable injury to County that may not be adequately compensated by monetary damages and that, in addition to County's other rights under this Paragraph 77 and at law and in equity, County shall have the right to seek injunctive relief to enforce the provisions of this Paragraph 77. The provisions of this Paragraph 77 shall survive the expiration of termination of this Agreement.

#### 77.5 Work Order Provisions

The parties may determine with respect to any Work Order under which the Contractor will have possession, custody, or control of any County Data that the County shall provide for periodic back-up processes and/or back-up the relevant data before Contractor performs any Services under such Work Order.

7. Exhibit E (Business Associate Protected Health Information Disclosure Agreement) to the Agreement is deleted in its entirety and replaced with the new Exhibit E (Business Associate Protected Health Information Disclosure Agreement), attached to this Amendment No. 2 and incorporated by this reference.

8. Contractor represents and warrants on behalf of itself and the person executing this Amendment No. 2 on its behalf that such person is an authorized agent for Contractor who has actual authority to bind such entity to each and every term, condition and obligation of this Amendment No. 2 and that all requirements of Contractor have been fulfilled to provide such actual authority.
9. Except as otherwise specifically provided under this Amendment No. 2, the Agreement, as amended under Amendment No. 1 and this Amendment No. 2, shall remain in full force and effect.

**SIGNATURES ON FOLLOWING PAGE**

**AMENDMENT NUMBER TWO TO MASTER SERVICES AGREEMENT FOR  
ENTERPRISE CONTENT MANAGEMENT SERVICES**

**IN WITNESS WHEREOF**, County and Contractor by their duly authorized signatures have caused this Amendment Number Two to the Agreement to be effective on the day, month and year first above written.

**COUNTY OF LOS ANGELES:**

By \_\_\_\_\_  
DON KNABE  
Chairman, Board of Supervisors

**ATTEST:**

SACHI HAMAI  
Executive Officer-Clerk  
Los Angeles County  
Board of Supervisors

By \_\_\_\_\_  
Deputy

**CONTRACTOR:**  
EMC CORPORATION

By Jan Light  
Signature  
Janessa Light  
\_\_\_\_\_  
Print Name  
Contracts Manager  
\_\_\_\_\_  
Title

**APPROVED AS TO FORM:**

JOHN F. KRATTLI  
County Counsel

By Amanda M.L. Drukker  
AMANDA M.L. DRUKKER  
Senior Deputy County Counsel

## EXHIBIT E

### BUSINESS ASSOCIATE PROTECTED HEALTH INFORMATION DISCLOSURE AGREEMENT

#### BUSINESS ASSOCIATE AGREEMENT UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (“HIPAA”)

County is a Covered Entity as defined by, and subject to the requirements and prohibitions of, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), and regulations promulgated thereunder, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (collectively, the “HIPAA Rules”).

Contractor performs or provides functions, activities or services to County that require Contractor in order to provide such functions, activities or services to create, access, receive, maintain, and/or transmit information that includes or that may include Protected Health Information, as defined by the HIPAA Rules. Notwithstanding anything to the contrary in this Business Associate Agreement, or any agreement to which this Business Associate Agreement is attached, this Business Associate Agreement will apply to Contractor only to the extent Contractor is a Business Associate under HIPAA.

The HIPAA Rules require a written agreement (“Business Associate Agreement”) between County and Contractor in order to mandate certain protections for the privacy and security of Protected Health Information, and these HIPAA Rules prohibit the disclosure to or use of Protected Health Information by Contractor if such an agreement is not in place.

This Business Associate Agreement and its provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Contractor in compliance with the HIPAA Rules.

Therefore, the parties agree as follows:

#### **1. DEFINITIONS**

- 1.1 “Breach” has the same meaning as the term “breach” at 45 C.F.R. § 164.402.
- 1.2 “Business Associate” has the same meaning as the term “business associate” at 45 C.F.R. § 160.103. For the convenience of the parties, a “business associate” is a person or entity, other than a member of the workforce of covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to Protected Health Information. A “business associate” also is a subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of another business associate. And in reference to the party to this Business Associate Agreement “Business Associate” shall mean Contractor.
- 1.3 “Covered Entity” has the same meaning as the term “covered entity” at 45 C.F.R. § 160.103, and in reference to the party to this Business Associate Agreement, “Covered Entity” shall mean County.

- 1.4 “Data Aggregation” has the same meaning as the term “data aggregation” at 45 C.F.R. § 164.501.
- 1.5 “De-identification” refers to the de-identification standard at 45 C.F.R. § 164.514.
- 1.6 “Designated Record Set” has the same meaning as the term “designated record set” at 45 C.F.R. § 164.501.
- 1.7 “Disclose” and “Disclosure” mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate’s internal operations or to other than its workforce. (See 45 C.F.R. § 160.103.)
- 1.8 “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. (See 42 U.S. C. § 17921.)
- 1.9 “Electronic Media” has the same meaning as the term “electronic media” at 45 C.F.R. § 160.103. For the convenience of the parties, electronic media means (1) Electronic storage material on which data is or may be recorded electronically, including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
- 1.10 “Electronic Protected Health Information” has the same meaning as the term “electronic protected health information” at 45 C.F.R. § 160.103, limited to Protected Health Information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.11 “Health Care Operations” has the same meaning as the term “health care operations” at 45 C.F.R. § 164.501.
- 1.12 “Individual” has the same meaning as the term “individual” at 45 C.F.R. § 160.103. For the convenience of the parties, Individual means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).
- 1.13 “Law Enforcement Official” has the same meaning as the term “law enforcement official” at 45 C.F.R. § 164.103.



- 1.14 “Minimum Necessary” refers to the minimum necessary standard at 45 C.F.R. § 162.502(b).
- 1.15 “Protected Health Information” has the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Protected Health Information includes information that (i) relates to the past, present or future physical or mental health or condition of an Individual; the provision of health care to an Individual, or the past, present or future payment for the provision of health care to an Individual; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity, and includes Protected Health Information that is made accessible to Business Associate by Covered Entity. “Protected Health Information” includes Electronic Protected Health Information.
- 1.16 “Required by Law” “ has the same meaning as the term “required by law” at 45 C.F.R. § 164.103.
- 1.17 “Secretary” has the same meaning as the term “secretary” at 45 C.F.R. § 160.103
- 1.18 “Security Incident” has the same meaning as the term “security incident” at 45 C.F.R. § 164.304.
- 1.19 “Services” means, unless otherwise specified, those functions, activities, or services in the applicable underlying Agreement, Contract, Master Agreement, Work Order, or Purchase Order or other service arrangement, with or without payment, that gives rise to Contractor’s status as a Business Associate.
- 1.20 “Subcontractor” has the same meaning as the term “subcontractor” at 45 C.F.R. § 160.103.
- 1.21 “Unsecured Protected Health Information” has the same meaning as the term “unsecured protected health information” at 45 C.F.R. § 164.402.
- 1.22 “Use” or “Uses” means, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate’s internal operations. (See 45 C.F.R § 164.103.)
- 1.23 Terms used, but not otherwise defined in this Business Associate Agreement, have the same meaning as those terms in the HIPAA Rules.

**2. PERMITTED AND REQUIRED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 2.1 Business Associate may only Use and/or Disclose Protected Health Information as necessary to perform Services, and/or as necessary to comply with the obligations of this Business Associate Agreement.

- 2.2 Business Associate may Use Protected Health Information for de-identification of the information if de-identification of the information is required to provide Services.
- 2.3 Business Associate may Use or Disclose Protected Health Information as Required by Law.
- 2.4 Business Associate shall make Uses and Disclosures and requests for Protected Health Information consistent with the applicable Covered Entity's applicable Minimum Necessary policies and procedures.
- 2.5 Business Associate may Use Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities.
- 2.6 Business Associate may Disclose Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities, provided the Disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed (i.e., the recipient) that it will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- 2.7 Business Associate may provide Data Aggregation services relating to Covered Entity's Health Care Operations if such Data Aggregation services are necessary in order to provide Services.

**3. PROHIBITED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 3.1 Business Associate shall not Use or Disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required by Law.
- 3.2 Business Associate shall not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Sections 2.5 and 2.6.
- 3.3 Business Associate shall not Use or Disclose Protected Health Information for de-identification of the information except as set forth in section 2.2.

**4. OBLIGATIONS TO SAFEGUARD PROTECTED HEALTH INFORMATION**

- 4.1 Business Associate shall implement, use, and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this Business Associate Agreement.
- 4.2 Business Associate shall comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for by this Business Associate Agreement.

5. **REPORTING NON-PERMITTED USES OR DISCLOSURES, SECURITY INCIDENTS, AND BREACHES OF UNSECURED PROTECTED HEALTH INFORMATION**

- 5.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information not permitted by this Business Associate Agreement, any Security Incident, and/ or any Breach of Unsecured Protected Health Information as further described in Sections 5.1.1, 5.1.2, and 5.1.3.
- 5.1.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors not provided for by this Agreement of which Business Associate becomes aware.
- 5.1.2 Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.
- 5.1.3 Business Associate shall report to Covered Entity any Breach by Business Associate, its employees, representatives, agents, workforce members, or Subcontractors of Unsecured Protected Health Information upon Discovery by Business Associate.
- 5.2 Except as provided in Section 5.3, for any reporting required by Section 5.1, Business Associate shall provide, to the extent available, all information required by, and within the times frames specified in, Sections 5.2.1 and 5.2.2.
- 5.2.1 Business Associate shall make an immediate telephonic report upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information to **(562) 940-3335** that minimally includes:
- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
  - (b) The number of Individuals whose Protected Health Information is involved;
  - (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);
  - (d) The name and contact information for a person highly knowledge of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach
- 5.2.2 Business Associate shall make a written report without unreasonable delay and in no event later than three (3) business days from the date of discovery by Business Associate of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach of Unsecured Protected Health Information and to the **Chief Privacy Officer at: Chief Privacy Officer, Kenneth Hahn Hall of Administration, 500 West**

**Temple Street, Suite 525, Los Angeles, California 90012,**  
**HIPAA@auditor.lacounty.gov**, that includes, to the extent possible:

- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
- (b) The number of Individuals whose Protected Health Information is involved;
- (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);
- (d) The identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, Used, or Disclosed;
- (e) Any other information necessary to conduct an assessment of whether notification to the Individual(s) under 45 C.F.R. § 164.404 is required;
- (f) Any steps Business Associate believes that the Individual(s) could take to protect him or herself from potential harm from the non-permitted Use or Disclosure, Security Incident, or Breach;
- (g) A brief description of what Business Associate is doing to investigate, to mitigate harm to the Individual(s), and to protect against any further similar occurrences; and
- (h) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach.

5.2.3 If Business Associate is not able to provide the information specified in Section 5.2.1 or 5.2.2 at the time of the required report, Business Associate shall provide such information promptly thereafter as such information becomes available.

5.3 Business Associate may delay the notification required by Section 5.1.3, if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security.

5.3.1 If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay its reporting and/or notification obligation(s) for the time period specified by the official.

5.3.2 If the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay its reporting and/or notification obligation(s) temporarily and no longer than 30 days from the date of the oral

statement, unless a written statement as described in Section 5.3.1 is submitted during that time.

**6. WRITTEN ASSURANCES OF SUBCONTRACTORS**

- 6.1 In accordance with 45 C.F.R. § 164.502 (e)(1)(ii) and § 164.308 (b)(2), if applicable, Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate is made aware of its status as a Business Associate with respect to such information and that Subcontractor agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
- 6.2 Business Associate shall take reasonable steps to cure any material breach or violation by Subcontractor of the agreement required by Section 6.1.
- 6.3 If the steps required by Section 6.2 do not cure the breach or end the violation, Contractor shall terminate, if feasible, any arrangement with Subcontractor by which Subcontractor creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate.
- 6.4 If neither cure nor termination as set forth in Sections 6.2 and 6.3 is feasible, Business Associate shall immediately notify County.
- 6.5 Without limiting the requirements of Section 6.1, Business Associate shall require Subcontractor to notify Business Associate in the event of a Breach of Unsecured Protected Health Information. Business Associate shall thereafter notify Covered Entity of the Breach of Unsecured Protected Health Information as required in this Business Associate Agreement.
- 6.6 Without limiting the requirements of Section 6.1, Business Associate shall require Subcontractor to destroy, or in the alternative to return to Business Associate, any Protected Health Information created, received, maintained, or transmitted by Subcontractor on behalf of Business Associate so as to enable Business Associate to comply with the provisions of Section 18.4.
- 6.7 Business Associate shall demonstrate to Covered Entity, at Covered Entity's request, that Business Associate has adequate written assurances in place with its Subcontractor(s) (which may include but is not limited to a copy of any and all Subcontractor Business Associate Agreements) as required by Section 6.1.
- 6.8 Sections 6.1 and 6.7 are not intended by the parties to limit in any way the scope of Business Associate's obligations related to Subcontracts or Subcontracting in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's obligations hereunder.

**7. ACCESS TO PROTECTED HEALTH INFORMATION**

- 7.1 To the extent Covered Entity determines that Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within two (2) business days after receipt of a request from Covered Entity, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and shall provide such Individuals(s) or other person(s) designated by Covered Entity with a copy the specified Protected Health Information, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.524.
- 7.2 If any Individual requests access to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within two (2) days of the receipt of the request. Whether access shall be provided or denied shall be determined by Covered Entity.
- 7.3 To the extent that Business Associate maintains Protected Health Information that is subject to access as set forth above in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such information, Business Associate shall provide the Individual with access to the Protected Health Information in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual.

## **8. AMENDMENT OF PROTECTED HEALTH INFORMATION**

- 8.1 To the extent Covered Entity determines that any Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within ten (10) business days after receipt of a written request from Covered Entity, make any amendments to such Protected Health Information that are requested by Covered Entity, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.526.
- 8.2 If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request. Whether an amendment shall be granted or denied shall be determined by Covered Entity.

## **9. ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 9.1 Business Associate shall maintain an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or Subcontractors, as is determined by Covered Entity to be necessary in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.
- 9.1.1 Any accounting of disclosures provided by Business Associate under Section 9.1 shall include:
- (a) The date of the Disclosure;

- (b) The name, and address if known, of the entity or person who received the Protected Health Information;
  - (c) A brief description of the Protected Health Information Disclosed; and
  - (d) A brief statement of the purpose of the Disclosure.
- 9.1.2 For each Disclosure that could require an accounting under Section 9.1, Business Associate shall document the information specified in Section 9.1.1, and shall maintain the information for six (6) years from the date of the Disclosure.
- 9.2 Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of a written request from Covered Entity, information collected in accordance with Section 9.1.1 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528
- 9.3 If any Individual requests an accounting of disclosures directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request, and shall provide the requested accounting of disclosures to the Individual(s) within 30 days. The information provided in the accounting shall be in accordance with 45 C.F.R. § 164.528.

## **10. COMPLIANCE WITH APPLICABLE HIPAA RULES**

- 10.1 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity's performance of such obligation(s).
- 10.2 Business Associate shall comply with all HIPAA Rules applicable to Business Associate in the performance of Services.

## **11. AVAILABILITY OF RECORDS**

- 11.1 Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations to the extent required by such Regulations.
- 11.2 Unless prohibited by the Secretary, Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

## **12. MITIGATION OF HARMFUL EFFECTS**

- 12.1 Business Associate shall mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement that is known to Business Associate.
- 12.2 Covered Entity shall comply with the Minimum Necessary standard.

**13. BREACH NOTIFICATION TO INDIVIDUALS**

- 13.1 Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors, provide breach notification to the Individual in a manner that permits Covered Entity to comply with its obligations under 45 C.F.R. § 164.404.
  - 13.1.1 Business Associate shall notify, subject to the review and approval of Covered Entity, each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of any such Breach.
  - 13.1.2 The notification provided by Business Associate shall be written in plain language, shall be subject to review and approval by Covered Entity, and shall include, to the extent possible:
    - (a) A brief description of what happened, including the date of the Breach and the date of the Discovery of the Breach, if known;
    - (b) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - (c) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;
    - (d) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individual(s), and to protect against any further Breaches; and
    - (e) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 13.2 Covered Entity, in its sole discretion, may elect to provide the notification required by Section 13.1 and/or to establish the contact procedures described in Section 13.1.2.
- 13.3 Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, in complying with Subpart D of 45 C.F.R. Part 164, including but not limited to costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information; Covered Entity shall not be responsible for any costs incurred by Business Associate in providing the notification



required by 13.1 or in establishing the contact procedures required by Section 13.1.2. Reimbursement under this Section 13.3 shall be limited by Paragraph 16 (Indemnification and Limitation of Liability) of the agreement to which this Business Associate Agreement is attached (Master Services Agreement No. 77036), if and to the extent applicable by the express terms of such Paragraph 16.

#### **14. INDEMNIFICATION**

- 14.1 Business Associate shall indemnify, defend, and hold harmless Covered Entity, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, expenses (including attorney and expert witness fees), and penalties and/or fines (including regulatory penalties and/or fines), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement, including, but not limited to, compliance and/or enforcement actions and/or activities, whether formal or informal, by the Secretary or by the Attorney General of the State of California.
- 14.2 Section 14.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Insurance and/or Indemnification in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 14.3 Business Associate's obligations under Section 14.1 are subject to Paragraph 16 (Indemnification and Limitation of Liability) of the agreement to which this Business Associate Agreement is attached (Master Services Agreement No. 77036), if and to the extent applicable by the express terms of such Paragraph 16.

#### **15. OBLIGATIONS OF COVERED ENTITY**

- 15.1 Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the Use or Disclosure of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own Uses and Disclosures accordingly.
- 15.2 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except to the extent that Business Associate may Use or Disclose Protected Health Information as provided in Sections 2.3, 2.5, and 2.6.

#### **16. TERM**

- 16.1 Unless sooner terminated as set forth in Section 17, the term of this Business Associate Agreement shall be the same as the term of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

- 16.2 Notwithstanding Section 16.1, Business Associate's obligations under Sections 11, 14 and 18 shall survive the termination or expiration of this Business Associate Agreement.

**17. TERMINATION FOR CAUSE**

- 17.1 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and the breaching party has not cured the breach or ended the violation within the time specified by the non-breaching party, which shall be reasonable given the nature of the breach and/or violation, the non-breaching party may terminate this Business Associate Agreement.
- 17.2 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and cure is not feasible, the non-breaching party may terminate this Business Associate Agreement immediately.

**18. DISPOSITION OF PROTECTED HEALTH INFORMATION UPON TERMINATION OR EXPIRATION**

- 18.1 Except as provided in Section 18.3, upon termination for any reason or expiration of this Business Associate Agreement, Business Associate shall return or, if agreed to by Covered entity, shall destroy as provided for in Section 18.2, all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate, including any Subcontractor, still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- 18.2 Destruction for purposes of Section 18.2 and Section 6.6 shall mean that media on which the Protected Health Information is stored or recorded has been destroyed and/or electronic media have been cleared, purged, or destroyed in accordance with the use of a technology or methodology specified by the Secretary in guidance for rendering Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals.
- 18.3 Notwithstanding Section 18.1, in the event that return or destruction of Protected Health Information is not feasible or Business Associate determines that any such Protected Health Information is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, Business Associate may retain that Protected Health Information for which destruction or return is infeasible or that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities and shall return or destroy all other Protected Health Information.

- 18.3.1 Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information, including continuing to use appropriate safeguards and continuing to comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for in Sections 2.5 and 2.6 for so long as such Protected Health Information is retained, and Business Associate shall not Use or Disclose such Protected Health Information other than for the purposes for which such Protected Health Information was retained.
- 18.3.2 Business Associate shall return or, if agreed to by Covered entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for Business Associate's proper management and administration or to carry out its legal responsibilities.
- 18.4 Business Associate shall ensure that all Protected Health Information created, maintained, or received by Subcontractors is returned or, if agreed to by Covered entity, destroyed as provided for in Section 18.2.

**19. AUDIT, INSPECTION AND EXAMINATION**

- 19.1 Covered Entity reserves the right to conduct a reasonable inspection of the facilities, systems, information systems, books, records, agreements, and policies and procedures relating to the Use or Disclosure of Protected Health Information for the purpose determining whether Business Associate is in compliance with the terms of this Business Associate Agreement and any non-compliance may be a basis for termination of this Business Associate Agreement and the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's obligations hereunder, as provided for in section 17. Notwithstanding the foregoing, Business Associate may, in its sole discretion, mark in accordance with Paragraph 24.5 of the agreement to which this Business Associate Agreement is attached (Master Services Agreement No. 77036), any information relating to its internal practices, books, or records which Business Associate reasonably determines to be confidential, proprietary, or trade secret.
- 19.2 Covered Entity and Business Associate shall mutually agree in advance upon the scope, timing, and location of any such inspection.
- 19.3 At Business Associate's request, and to the extent permitted by law, Covered Entity shall execute a nondisclosure agreement, upon terms and conditions mutually agreed to by the parties.
- 19.4 That Covered Entity inspects, fails to inspect, or has the right to inspect as provided for in Section 19.1 does not relieve Business Associate of its responsibility to comply with this Business Associate Agreement and/or the HIPAA Rules or impose on Covered Entity any responsibility for Business Associate's compliance with any applicable HIPAA Rules.
- 19.5 Covered Entity's failure to detect, its detection but failure to notify Business Associate, or its detection but failure to require remediation by Business Associate of an unsatisfactory practice by Business Associate, shall not constitute acceptance of such

practice or a waiver of Covered Entity's enforcement rights under this Business Associate Agreement or the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

- 19.6 Section 19.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Inspection and/or Audit and/or similar review in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

## **20. MISCELLANEOUS PROVISIONS**

- 20.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with the terms and conditions of this Business Associate Agreement will be adequate or satisfactory to meet the business needs or legal obligations of Business Associate.
- 20.2 HIPAA Requirements. The Parties agree that the provisions under HIPAA Rules that are required by law to be incorporated into this Amendment are hereby incorporated into this Agreement.
- 20.3 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 20.4 Construction. In the event that a provision of this Business Associate Agreement is contrary to a provision of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 20.5 Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- 20.6 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules.
- 20.7 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules and any other privacy laws governing Protected Health Information.